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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,466	06/20/2001	Arthur L. Herbst	58532-012	9630

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MCDERMOTT WILL & EMERY
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

EXAMINER

KIM, VICKIE Y

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 05/16/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/884,466

Applicant(s)

HERBST ET AL.

Examiner

Vickie Kim

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

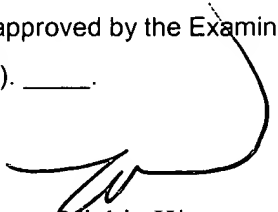
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-12.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


Vickie Kim
Patent examiner

Continuation of 2. NOTE: Newly amended claims changed the scope wherein new search and the further consideration are required since the previous rejection which is made based on the limitation which is now requested to be deleted, is now overcome. Because the proposed amendment is requested after the prosecution, it will not entered due to the reasons mentioned immediately above.

Continuation of 10. Other: Request for the withdrawal of finality is carefully reconsidered. Applicant's argument is considered but is not persuasive because the new ground of rejection is necessitated by applicant's amendment filed August 21, 2002 (paper no. 6) wherein the amendment changed the scope of claims. The office action (paper No. 5), 102 rejection (for independent claim) and 103 rejection (for dependent claims), is prepared based on Seibert reference as a primary reference in both rejections. However, Seibert reference is overcome due to said amendment (paper no. 6). Since all the rejections in the office action (paper no. 8) is dependent on Seibert's reference and Seibert reference is overcome, the 103 rejection (for dependent claims) had to be reformulated. Therefore, finality was proper and necessitated by applicant's amendment. And thus, finality is maintained.